

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

DAVID CURTIS JOHNSON

PLAINTIFF

V.

CIVIL ACTION NO. 3:08-cv-00632-CWR-FKB

TOMMY HANKINS, ET AL.

DEFENDANTS

REPORT AND RECOMMENDATION

This cause is before the court on Plaintiff's motion for a preliminary injunction (Docket No. 103). Having considered the motion and the response filed by the defendants, the court recommends that the motion be denied.

Injunctive relief is not appropriate unless a plaintiff satisfies the stringent test set out in *Mississippi Power & Light Co. v. United Gas Pipe Co.*, 760 F.2d 618 (5th Cir. 1985)(citing *Canal Authority of State of Florida v. Callaway*, 489 F.2d 567 (5th Cir. 1974)). A plaintiff must establish (1) a substantial likelihood that he will prevail on the merits; (2) a substantial threat that he will suffer irreparable injury if the injunction is not granted; (3) that the threat and injury to the plaintiff outweighs the threat and harm the injunction may do to the defendants; and (4) that granting the injunction will not disserve the public interest. *Mississippi Power & Light Co.*, 760 F. 2d at 621. Each requirement must be met before the court may grant the drastic remedy of injunctive relief. *Id.*

By his motion, Plaintiff alleges that on September 30, 2007, he was attacked by Defendants Tommy Hankins, Felix Norwood, and James Clark, whom Plaintiff states are guards at CMCF. Plaintiff asserts that he feels threatened by these defendants and presumably the injunctive relief he seeks is to be moved. However, *via* their response to the motion, Defendants point out that Plaintiff is currently housed at SMCI in Leakesville, Mississippi, and the

defendants do in fact work at CMCF, which is in Pearl, Mississippi. Leakesville is the address on file with the court for the plaintiff. Plaintiff has not alleged any facts demonstrating that any of the prerequisites for injunctive relief are met. Accordingly, the undersigned recommends that Plaintiff's motion be denied without a hearing.

The parties are hereby notified that failure to file written objections to the proposed findings, conclusions, and recommendation contained within this report and recommendation within fourteen (14) days after being served with a copy will bar that party, except on grounds of plain error, from attacking on appeal the proposed factual findings and legal conclusions accepted by the district court. 28 U.S.C. §636; Fed. R. Civ. P. 72(b)(as amended, effective December 1, 2009); *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

Respectfully submitted, this the 2nd day of November, 2011.

s/F. Keith Ball
UNITED STATES MAGISTRATE JUDGE